IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

APPEAL NO. 1163 OF 2001

IN

NOTICE OF MOTION NO. 2011 OF 2000

IN

SUIT NO. 2857 OF 2000

National Textile Corporation (MN) Ltd.
& Anr. ... Appellants

Versus

Godrej & Boyce Manufacturing Co.Ltd. Respondents

Mr. H.H.Thakker with Mr. R.A.Kaure & Mr. Jitendra Rawal i/b. Banatwala & Co. for the appellants.

Mr. N.H.Seervai with Mr. F.Porniwala & K.D. Mehta i/b. Payne & Co. for Respondents.

CORAM: D.K.DESHMUKH &
J.H.BHATIA,JJ.

DATE: 28th September,2007.

P.C.

1. By this Appeal, the appellants challenge the order dated 27th July, 2000 passed in Notice of Motion

No.2011 of 2000. That Notice of Motion was taken out by the respondents. The respondents are the plaintiffs in Suit No.2857 of 2000. Suit No.2857 of 2000 relate to the property which is described in Exhibit "A" to the plaint. In the suit, the plaintiffs have prayed for the following reliefs. They read as under :-

> "a) that this Hon'ble court be pleased to declare that the Plaintiff is the owner of the said lands more particularly described in Exhibit "A" hereto;
>
> b) that this Hon'ble Court be pleased to declare that the said lands more particularly described in Exhibit "A" hereto, are not public premises within the meaning of section 2(e) of the Public Premises (Eviction of Unauthorised Occupants Act,1971, and therefore the provisions of Public premises (Eviction of Unauthorized Occupants) Act, 1971, do not apply to the said lands;
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> (c) that this Hon'ble Court be pleased to declare that the said Notices dated 28.6.2000 and 29.6.2000, issued by the 2nd Defendant are illegal, ab initio void and without jurisdiction;

d) that this Hon'ble Court be pleased to order and decree the 2nd Defendant by a mandatory order and injunction of this Hon'ble Court to forthwith withdraw, cancel and set aside the said Notices dated 28.6.2000 and 29.6.2000.

e) that this Hon'ble Court be pleased to restrain the Defendants by themselves, their servants, agents, officers and subordinates by a permanent order and injunction of this Hon'ble Court from in any manner whatsoever taking any action whatsoever against the plaintiff, its servants, agents, officers and subordinates pursuant to and/or in implementation of the said Notices dated 28.6.2000 and 29.6.2000."

2. Perusal of the above prayer clauses show that so far as prayer clauses (b), (c), (d) and (e) are concerned, they relate to the notices issued under the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 (hereinafter referred to as "the Act") and action to be taken by the Authority under the said Act. Prayer clause (a) which seeks a decree of declaration that the plaintiff has become the owner of the land. Perusal of the plaint shows that, according to the plaintiff, the plaintiff has become owner of the land of

which the plaintiff was the tenant by adverse possession. According to the averments in the plaint, the property initially belonged to a company by name "Jam Manufacturing Co.Ltd." By an Indenture of Lease dated 15.7.1935, lease of the property was granted to the plaintiff for a period of 40 years from 1.8.1933. Before the period of lease expired, by letter dated 30.12.1972, the landlord asked the plaintiff to hand over possession of the property because, according to the landlord, the property was urgently required by the landlord. The plaintiff however, refused to hand over the property. The period of lease expired on 1.8.1973, the landlord again asked for possession, but the plaintiff refused to hand over possession and claimed that its rights were protected by the Bombay Rent Act. IN 1977-78, the management of the landlord company changed. The new management also asked the plaintiff to hand over possession of the property, but the plaintiff refused to hand over possession. In 1981, the landlord sought permission of the defendant to draw water from the well situated on the property, but the plaintiff refused permission on the ground that the water in the well is insufficient for its own needs. In 1983, an Ordinance was issued by the Central Government, as a result of which the management of the landlord was taken over. ON 8th September 1995, Nationalisation Act came into force, as a result of which the property of the

landlord vested in the Central Government. The case of the plaintiff is that since June 1973, the plaintiff stopped paying rent to the landlord and therefore it became owner of the property by adverse possession. As in 1995 the company was not the owner of the property, under the Nationalisation Act, the property would not vest in the Central Government. Assuming that the property, as a result of the Nationalisation Act vested in the Central Government and therefore it is public premises within the meaning of the Act a notice dated 29th June, 2000 was issued under the Act asking the plaintiff to show cause why an order of eviction should not be made against the plaintiff on the grounds mentioned in the notice. Thus, the plaintiff has claimed by prayer clauses (b) to (e) reliefs in relation to the notice issued under the said Act. In this suit, Notice of Motion was taken out by the plaintiff praying for temporary injunction restraining the defendants from taking action against the plaintiff pursuant to the notice issued under the said Act. Prayer clause (a) of the notice of Motion is relevant. It reads as under :-

> "(a) that pending the hearing and final disposal of the suit, this Hon’ble court may be pleased to restrain the Defendants by themselves, their servants, agents, officers and subordinates from in any manner taking any action against the

Plaintiff, its servants, agents,officers and subordinates pursuant to and/or in implementation of the said notices dated 28th June, 2000 and 29th June 2000, issued by the Second Defendant against the Plaintiff (copies whereof are annexed as Exhibit "N" and "O" respectively to the Plaint."

3. The Notice of Motion was opposed by the Defendants - National Textile Corporation. According to them, in view of the provisions of Section 15 of the said Act, the suit itself was not maintainable. In any case, in view of the provisions of Sec. 10 of the said Act, the Court cannot grant an order of temporary injunction restraining the Authority under the Act from taking action under the Act. It appears that the Defendants also contended that the plaintiff also does not become owner of the property as claimed by the plaintiff by adverse possession. The Notice of Motion was heard by a learned Single Judge of this Court and it was decided by order dated 27th July, 2000. The learned Single Judge made an order directing the Defendants not to execute any order that may be passed in proceedings under the Public Premises Eviction Act without first applying to this Court. The present Appeal is directed against this order.

4. The learned Counsel appearing for the appellants first submitted that it is clear that in view of the provisions of section 15 of the said Act, the suit filed by the plaintiff claiming decrees in terms of prayer clause (b) to (e) was clearly not maintainable. He submits that even assuming that the suit claiming a decree of declaration that the plaintiff has become owner of the land by adverse possession is maintainable, then also by virtue of the provisions of Sec. 10, the Court could not have granted the order of temporary injunction. The learned Counsel relies on a Judgment of the Supreme Court in the case of **Life Insurance Corporation of India vs. Shiva Prasad Tripathi and Ors. reported in (1996) 7 SCC 676.** He further submits that the learned Single judge, after observing that he cannot make an order as prayed for by the plaintiff, has made an order which restrains the defendants from giving effect to the order made under the Act without seeking leave of the Court. The learned Counsel submits that the order requiring the defendants to seek leave of the Court before giving effect to the order is contrary to the scheme of the Act itself. It is submitted that under the Act, power to judge the validity of the order is conferred on the appellate authority constituted under the Act. He submits that the order of the learned Single Judge amounts to this Court conferring on itself

the power to judge whether the order made under the Act is valid or invalid. The learned Counsel further submits that even assuming that the Court had power to make an order of temporary injunction despite the provisions of Section 15 and Section 10 of the Act, the order of temporary injunction could not have been made without the learned Single Judge recording a finding that the plaintiff has made a strong prima facie case insofar as the aspect of the plaintiff becoming owner of the property by adverse possession is concerned. The learned Counsel submits that in the year 1933, the plaintiff became the tenant of the land. The plaintiff continued to be in possession despite expiry of the lease, that would not make the plaintiff owner of the property by adverse possession. The learned Counsel submits that unless the Court examines the case of the plaintiff on merits and then records a finding that the plaintiff has made out a strong prima facie case that it is likely to get decree of declaration that the plaintiff has become owner of the property by adverse possession, the learned Judge could not have made an order of temporary injunction.

5. The learned Counsel appearing for the plaintiff, on the other hand, submits that the suit of the plaintiff is maintainable in any case so far as the relief of a decree of declaration that the plaintiff has

become owner of the land by adverse possession is concerned. According to him, therefore, if the suit of the plaintiff is maintainable, it has to be said that the Court has jurisdiction to make interim order which is necessary for keeping the lis alive so that the suit of the plaintiff does not become infructuous. The learned Counsel submits that it is the case of the plaintiff that the notice issued by the Authority under the Act is patently without jurisdiction and, therefore, according to him, the Court has jurisdiction to make an order of temporary injunction. The learned Counsel submits that power to make declaration of title of the land or property is vested only in the Civil Court. He relies on the Judgment of the Supreme Court in the case of **Government of Andhra Pradesh vs. Thummala Krishna Rao and another, reported in (1982) 2 SCC 134**. He further submits that the learned Single Judge has not made an order of temporary injunction. He has just made an order which was necessary for keeping the lis between the parties alive.

6. If the record is perused in the light of the rival submissions, it becomes clear that by prayer clauses (b) to (e), the plaintiff is seeking decrees in relation to the notices issued under the Act and proceedings initiated under the Act. Section 15 of the Act reads as under :-

"15. Bar of jurisdiction - No court shall have jurisdiction to entertain any suit or proceeding in respect of -

(a) the eviction of any person who is in unauthorised occupation of any public premises, or

(b) the removal of any building, structure or fixture or goods, cattle or other animal from any public premises under Section 5-A, or

(c) the demolition of any building or other structure made, or ordered to be made, under Section 5-B, or

(cc) the sealing of any erection or work or of any public premises under Section 5-C, or

(d) the arrears of rent payable under sub-section (1) of Section 7 or damages payable under sub-section (2), or interest payable under sub-section (2-A), of that section or

(e) the recovery of -

(i) costs of removal of any building, structure or fixture or goods, cattle or other animal under Section 5-A, or

(ii) expenses of demolition under Section 5-B, or

(iii) costs awarded to the Central Government or statutory authority under sub-section (5) of Section 9, or

(iv) any portion of such rent,damages, costs of removal, expenses of demolition or costs awarded to the Central Government or the statutory uthority."

Perusal of the provisions of Section 15 shows that the jurisdiction of the Civil Court to entertain any suit or proceeding in respect of the eviction of any person who is in unauthorised occupation of any public premises is ousted. According to the plaintiff, inspite of the provisions of Section 15 of the Act, Civil Court would have jurisdiction to examine whether the authority under the Act had power to issue the notices. According to the plaintiff, the authorities under the Act have no power to issue the notices, because the suit property is

not public premises within the meaning of the Act. According to the plaintiff, as a result of the Nationalisation Act, the property did not vest in the Central Government, because in 1995 when the Nationalisation Act came into force the property was not owned by the company, but it was owned by the plaintiff and the plaintiff had become owner of the property by adverse possession. Even assuming, as contended by the plaintiff, that the Civil Court will have jurisdiction to examine whether the authorities under the Act had power to issue the notices under the Act. Before making an interim order in favour of the plaintiff, the Civil Court will have to hold an enquiry to find out whether, prima facie, it can be said that, in 1987, as claimed by the plaintiff, the property came to be owned by the company. Perusal of the order impugned in the petition shows that no such enquiry has been held by the learned Single Judge and no such finding has been recorded. Perusal of the plaint shows that the plaintiff has stated its case of above adverse possession in paragraph 3(p) of the plaint. It reads as under :-

> "p) The Plaintiff states that, after June 1973, the Plaintiff did not pay any rent to the said Company in respect of the said lands. Further, as is clear from the aforesaid facts and

> circumstances, after the expiry of the term of the said Lease, the Plaintiff was in open and uninterrupted possession of the said lands, adversely to the said Company, and, at no time after the expiry of the said Lease, the Plaintiff either acknowledged or accepted the said Company as the owner of the said lands. Therefore, the Plaintiff submits that, in or about 1987, the Plaintiff became the owner of the said lands by adverse possession, and the right title and interest of the said Company in the said lands was extinguished. Further, the Plaintiff states that, as stated hereinabove, the term of the said Lease expired in 1973. Thereafter, in or about 1987, for a period of twelve years, the said Company did not take any legal proceedings to recover possession of the said lands from the Plaintiff. Therefore, by about 1987, the right title and interest of the said Company in the said lands was extinguished and the Plaintiff became the owner of the said lands."

Reading of the above quoted paragraph shows that according to the plaintiff, it became owner by adverse possession in 1987 because it stopped paying rent of the leased land since June 1973 and it continue to be in

possession even after expiry of the lease in August 1973. Perusal of letter dated 2.2.1974, copy of which is at Exhibit "H" shows that in that letter the plaintiff claims that despite expiry of the lease on 31.7.1973, the plaintiff is fully protected by the provisions of the Bombay Rent Act. Relevant portion of the letter reads as under :-

> "2. With reference to paragraph 2 of your above letter our clients deny that the said lease expired by efflux of time on 31st July 1973 and on which date our clients were bound and liable to hand over vacant and peaceful possession of the said land under the said Indenture of Lease as alleged. In any event, our clients say that they are fully protected under the provisions of Bombay Rent Control Act and your clients are not entitled to demand possession and/or take any proceedings against our client for exaction of our clients."

The plaintiff admitted that it got possession of the property as lessees. On expiry of the lease, they continued in possession despite the landlord asking the plaintiff to vacate and hand over possession claiming that their possession is protected by the Bombay Rent Act. Therefore, the plaintiff would be a tenant holding

over the property after expiry of the lease or a statutory tenant. There is no document produced on record which would show that till 1987, the plaintiff ever denied the title of the company as owner of the land. The material produced on record does not, even prima facie, show that the company ceased to be owner of the property and the plaintiff became owner of the property at any time before 1995 when the Nationalisation Act came into force. It prima facie appears that in 1995 the property was owned by the company and was in possession of the plaintiff and therefore as a consequence of coming into force of the Nationalisation Act, it vested in the Central Government and thus is public premises within the meaning of the Act. It thus prima facie appears that the authorities under the Act had power to issue notices under the Act in relation to which decrees are claimed in the suit. Therefore, prima facie, it appears that the jurisdiction of this Court to entertain the suit in so far as reliefs claimed by prayer clauses (b) to (e) is ousted by the the provisions of Section 15 of the Act.

7. The provisions of section 10 of the Act, in our opinion, needs to be considered. It reads as under :-

> "10. Finality of orders - save as otherwise expressly provided in this Act, every order made

> by an estate officer or appellate officer under this Act shall be final and shall not be called in question in any original suit, application or execution proceeding and no injunction shall be granted by any court or other authority in respect of any action taken or to be taken in pursuance of any power conferred by or under this Act."

Perusal of the above quoted provisions of Sec.10 shows that it takes away the power of the Court to grant any injunction in respect of any action taken or to be taken pursuant to any power conferred by or under the Act. The operative part of the order passed by the learned Single Judge reads as under :-

> "The Defendants not to execute any order that may be passed in proceedings under the Public Premises Eviction Act without first applying to this Court. Parties to be heard before any further orders are passed."

Perusal of the above quoted order makes it clear that by that order, the learned Single Judge has restrained the defendants from giving effect to the order that may be passed by the Estate Officer without seeking leave of the Court. The order of the learned Single Judge is

clearly contrary to the provisions of the Act. The learned Single Judge has incorporated the requirement of the defendants seeking leave of the Court before giving effect to the the order that may be passed under the Act. In our opinion, the impugned order is contrary to the scheme of the Act. Perusal of Section 9 of the Act shows that an appeal against the order to a judicial authority has been provided. When the Act itself has created a machinery for judging the validity of an order and the machinery provided by the Act is an appeal to a judicial authority, in our opinion, the learned Single Judge is not justified in conferring any power on the Civil Court to examine the validity of the order before permitting the defendants to give effect to that order. In our opinion, in view of the scheme of the Act, the order is absolutely impermissible. Further, the provisions of Sec. 10 have been considered by the Supreme Court in the Judgment in the case of LIC of India (referred to above). The observations of the Supreme Court in para 6 are as under :-

> "We regret to say that the orders of the High Court are bereft of any reasoning in giving a complete go-by to the bar erected under Section 10 of the Act. Section 10 had not to be viewed in isolation but had to be understood in the context of the other provisions of the Act

> standing in support thereof. Clearly, a suit for injunction to negate the orders of those two authorities stood barred under Section 10. The legislative mandate was that the court by order cannot obstruct the execution of the orders passed by the Estate Officer and the appellate authority. The court's power, otherwise, to adjudicate on the question whether a person was a tenant or not, in no way, has been taken away by Section 10. The adjudication however would be declaratory in nature and may sequelly end up in a consequence. Nothing interim however is obtainable. We therefore do not agree with the High Court that whatever stood achieved by the appellant under the Act, would suffer deprival just because the plea of the respondent being a tenant is debatable in the court. We, therefore, upset the impugned order of the High Court and dismiss the writ petition preferred by the respondent before the High Court."

Perusal of the above quoted observations of the Supreme court shows that the Supreme Court has observed that the legislative mandate is that the Court by order cannot obstruct the execution of the orders passed by the Estate Officer. This is what exactly has been done by the learned Single Judge. He has directed the

defendants not to give effect to the order without seeking leave of the Court. The Supreme Court has further observed that in any case the Court does not have power to make any interim order. In our opinion, the order of the learned Single Judge is in terms contrary to the law laid down by the Supreme Court in its Judgment in the case of LIC of India (supra). It is further to be seen that even assuming that the suit is maintainable and the Court has power to grant order of temporary injunction then also because the main prayer in the suit made by the plaintiff for a decree of declaration that the plaintiff has become owner of the property by adverse possession, it was the duty of the Court to examine the case of the plaintiff in detail to find out whether the plaintiff has made out strong prima facie case that it has become owner of the property by adverse possession. This position has to be examined in the light of the averments in the plaint itself and the documents placed on record. There is no finding recorded by the learned Single Judge that the plaintiff has made out a strong prima facie case that the plaintiff is likely to get decree of declaration that the plaintiff has become owner by adverse possession. We have, above, referred to the averments in the plaint and the document produced on record. We find that let alone strong prima facie case, the plaintiff does not have any case that the plaintiff became owner by adverse

possession of the property any time before 1995. Therefore the plaintiff clearly is not entitled to any order of temporary injunction. It is submitted on behalf of the plaintiff that by the impugned order, the learned Single Judge has not granted any injunction in favour of the plaintiff. The submission has no substance. By the order impugned in the petition, the learned Single Judge has restrained the defendant from executing any order that may be passed under the Act. This is clearly an order granting temporary injunction against the defendant to restrain them from doing a thing that they propose to do.

8. In our opinion, considering that against the order made by the Estate Officer, an appeal is provided to a judicial officer and thereafter, as noticed by the learned Single Judge himself in the impugned order, that the order of the appellate authority can be challenged before this Court under a Certiorari jurisdiction, the rights of the plaintiff were adequately protected by the scheme of the Act itself and therefore the learned Single Judge was not justified in making the interim order in favour of the plaintiff. In this view of the matter, therefore, in our opinion, the order impugned in the Appeal is liable to be set aside.

9. In the result, the Appeal is succeeds and is

allowed. The order impugned in the appeal is set aside.

10. At this stage, a request is made that the operation of the order passed by the learned Single Judge should be continued for some time so that the plaintiff can seek further remedy. In our opinion, it will not be appropriate to grant that request for two reasons: (1) that admittedly, the Estate Officer has not made any order so far and (2) having held that the Civil Court has no jurisdiction to make the order it will not be appropriate to continue that order.

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(D.K. DESHMUKH,J.)

(J.H.BHATIA,J.)